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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,846	03/29/2002	Lewis Colman	6727/OK096	1224

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EXAMINER

NATNITHITHADHA, NAVIN

ART UNIT	PAPER NUMBER
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3736

12

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,846

Applicant(s)

COLMAN ET AL.

Examiner

Navin Natnithithadha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-48, 61-63 and 66 is/are pending in the application.
- 4a) Of the above claim(s) 1-20, 49-60, 64 and 65 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-37, 40, 41, 43 and 44 is/are allowed.
- 6) ☒ Claim(s) 21, 22, 27, 38 and 61-63 is/are rejected.
- 7) ☒ Claim(s) 23-26, 28, 29, 39, 42, 45-48 and 66 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 11.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election of claims 21-48, 61-63 and 66 in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

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3. The abstract of the disclosure is objected to because this application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. Correction is required. See MPEP § 608.01(b).

4. The disclosure is objected to because of the following informalities: On page 9, fourth paragraph, the first line is not indented to five spaces. Appropriate correction is required.

5. The disclosure is objected to because of the following informalities: On page 8, line 8, the extra line between paragraphs appears to be a typographical error. Appropriate correction is required.

6. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

The specification does not provide support for the subject matter in claims 61-63, which states a checking unit operative to generate a second calibration material from a first material input thereto, wherein the first material is also a calibrating material, and wherein the materials are gases for use in a gas analyzer. It is not clear as to what is considered the first and second calibrating material and the process to generate the second calibration material from an inputted first material. The specification does not sufficiently describe the subject matter of these claims.

The Examiner has broadly interpreted claims 61-63 as two calibration materials, wherein the first calibration material is somehow transformed into a second calibration material which is to be used in a calibration checking unit of a gas analyzer. This broad

interpretation formed the basis of the examination of these claims. See the 35 U.S.C. 102(b) rejection anticipated by Sorensen et al.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 21, 27 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hartwig et al, U.S. Patent 5,239,492 A.

In regards to claim 21, Hartwig et al discloses a calibration checking device for use with a gas analyzer (detector) 102 (see abstract). Hartwig et al teaches the device comprises a calibration checking unit as a calibration circuit or sample gas circuit 104, in which the gas analyzer 102 is coupled to receive the sample gas circuit 104 which is used for calibrating (see col. 4, lines 21-45). Hartwig et al also teaches an enabling mechanism 210 for enabling operation of the gas analyzer 102 as a start switch for activating the gas analyzer 102 (see User Interface 210 in fig. 2, step 300 in fig. 3A, and col. 9, lines 42-48).

As to claim 27, Hartwig et al discloses the enabling mechanism is communicative with the gas analyzer by means of an electrical switch (see col. 9, lines 44-45).

As to claim 38, Hartwig et al discloses the calibration checking unit 104 releases a calibration checking gas of known composition into the gas analyzer 102 (see col. 4, lines 21-45).

8. Claims 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Sorensen et al, U.S. Patent 6,234,001 B1.

In regards to claim to claim 61, Sorensen et al discloses a calibration checking unit operative to generate a second calibration material (calibration gas) from a first material (carrier gas) input thereto (see col. 3, lines 4-26). The apparatus 10 generates a calibration gas by introducing a reference gas into the carrier gas.

As to claim 62, Sorensen et al discloses the first material is a calibrating material (carrier gas) used to generate an output calibration material (calibration gas) (see col. 3, lines 4-26).

As to claim 63, Sorensen et al discloses the first and second materials are gases for use in a gas analyzer (see col. 2, line 63 to col. 3, line 4).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hartwig et al, U.S. Patent 5,239,492 A, in view of Brown et al, U.S. Patent 5,303,575 A.

In regards to claim 21, Hartwig et al discloses the calibration checking device of claim 1 and rejected under 35 U.S.C. 102(b) discussed above. As to claim 22, Hartwig et al does not disclose the enabling mechanism is operative to count the number of tests performed by the gas analyzer. However, Brown et al discloses a breathing gas analyzer comprising an enabling mechanism operative to count the number of tests performed by the gas analyzer (see col. 18, lines 32-38). It would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Hartwig's invention with that of Brown in order to record the number of tests performed by the gas analyzer since the device was last serviced for accounting purposes as suggested by Brown in col. 18, lines 38-45.

Allowable Subject Matter

10. Claims 30-41, 43 and 44 are allowed.
11. Claims 23-26, 28, 29, 39, 42, 45-48 and 66 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
12. The following is a statement of reasons for the indication of allowable subject matter:

As to claim 23, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism operative to accumulate the time of operation of the gas analyzer.

As to claims 24, 26, 45 and 48, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including a filter for removing fluids from a gas to be analyzed.

As to claim 25, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism is actuated by the use of the calibration checking unit.

As to claim 28, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism operative to ensure proper location of the calibration checking unit.

As to claim 29, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism comprises optical transmitter and receiver means, the optical path between which is

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completed by reflection from the calibration checking unit only when the calibration checking unit is properly located in the gas analyzer.

In regards to claims 30-41, 43 and 44 the prior does not disclose a calibration checking device for use with a gas analyzer, including: a count actuating mechanism initiated by first use of the calibration checking device, operative to begin a count of the number of tests performed with the calibration checking device.

As to claim 39, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism is actuated by release of a calibration checking gas.

As to claims 42, 46 and 47, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism is actuated by means of an active integrated circuit disposed on the calibration checking device.

As to claim 66, the prior art does not disclose a calibration checking device for use with a gas analyzer according to claim 21, including an enabling mechanism is operative to accumulate the time since the last calibration check of the gas analyzer.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (703) 305-2445. The examiner can normally be reached on Monday-Friday, 9:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha
Patent Examiner
GAU 3736
February 11, 2004